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## Studying electoral systems — methodological aspects\*

**Abstract:** Studying electoral systems — methodological aspects

The concept of electoral deformation is conventional and its content is dependent on the given definition of representative democracy. Representative democracy's aim to achieve social volition is not fully achievable. The category of 'majority' is strictly an instrument of forming public authority and it cannot be equated with an expression of a given volition of the society's majority. All election systems deform, and the differences between them lie in the scale of that deformation. Electoral deformations are not only a consequence of the majority system, whether proportional or mixed. The author points in this regard to the deformations that stem from the legal ground-rules of election law in the form of a general, equal, secret, direct and free ballot. Further, he points to the relations between the size of an electorate and the size of the organs being elected, the stability of the election law, voter turnout rates, the role of public media and the power of public opinion polls. Election result research methods, such as voter behaviour gauges as well as gauges of the impact of an election system on a party system (indices of proportionality and disproportionality, effective numbers of parties, fragmentation and fractionalization of the party system, party aggregation and government relevance) should be applied in relation to a particular electoral system. Although these methods constitute very powerful research instruments, they do not set any methodological trends. This is because trends are derived from axiological and doctrinal priorities present in a singular electoral system.

**Keywords:** Representative democracy, election systems, electoral deformation, methodology of research, research methods

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\* The article is an English version of my publication entitled "Badanie systemów wyborczych — aspekty metodologiczne," published in a joint publication entitled *Wpływ deformacji wyborczych na systemy polityczne*. Ed. J. IWANEK. Toruń 2014.

Electoral systems are the subject of research of many scientific disciplines. Mathematical sciences are also successful in dealing with them. The need to develop methods of seat allocation requires the involvement of experts in this field.<sup>1</sup> Very often, they have had to address very specific challenges and fulfil political orders to develop a system that would meet pre-defined political needs. The projects of Thomas Hare, Carl Andrae, Victor d'Hondt, André Sainte-Laguë, Horst Fridrich Niemeyer and others were nothing more but a response to the criticism of the majority system, its injustice and deformability, as well as a desire to "rectify" proportional systems. After all, the era of proportional systems could not have started had it not been for mathematicians, who proposed their methods of seat allocation. This, in fact, coincided in time with their actual introduction into political practice. In the middle of the 19th century, as soon as proposals for proportional methods were declared, they were immediately introduced.<sup>2</sup>

Specialists in social sciences also rely, with lesser and greater success, on the results of these mathematical calculations. There are also different judgments as to the qualification of certain solutions to either the proportional system or the majority system, as is the case with the transferrable vote. On the other hand, formal language is often present in publications addressing election issues. For obvious reasons, such research is also conducted by experts in legal sciences. After all, election laws belong to a very important group of national constitutional laws, and it is these laws that are used for regulating electoral system in the states that are familiar with the concept of organic laws. Election issues are also contemplated in sociology, including the sociology of politics.

In the circle of political science, the issue of electoral systems may be considered, among others, from the point of view of political and legal doctrines (the ideas of representative democracy), history and the contemporariness of state regimes, mechanisms of converting votes into seats and their impact on party systems, as well as research on electoral deformations understood mostly as a lack of proportion between the number of votes and the number of seats achieved. One must also not forget about the important issue of political behaviour or electoral marketing. The study of electoral systems is broken down into a few planes: 1) elections to state government institutions; 2) elections to local government institutions (components of a federation, institutions of autonomous communities, local authorities), whose regimes in modern democracies differ substantially<sup>3</sup>; 3) elections to supranational institutions (currently — to the European Parliament).

<sup>1</sup> Extensive research in this field is carried out at the Wrocław University of Economy.

<sup>2</sup> In 1855, though the first concepts had appeared earlier.

<sup>3</sup> See also M. DOMAGAŁA, J. IWANEK: "Regionalne i lokalne ustroje polityczno-prawne." In: „*Studia Politicae Universitatis Silesiensis*.” Vol. 11. Eds. J. IWANEK, M. STOLARCZYK, co-op. R. GLAJCAR. Katowice 2013, pp. 15—29.

Such a broad-based analysis, which takes into account a multitude of variables, can certainly reveal a complete picture of the electoral systems of a state,<sup>4</sup> whereas from a comparative (inter-state) perspective, it allows one to visualise trends and describe the dominant solutions within a specific group of democratic states. Furthermore, such an analysis may be of a short- or long-term nature. In turn, a smaller scale project can successfully limit the electoral system only to those bodies that constitute the core of the political system of the state. In other words, it will encompass the institutions that, by virtue of their position and competence, play a vital role in the country and determine the essence of its political system. It is, after all, in these institutions that the decision-making process of the highest order is concentrated. Sometimes it may only apply to the lower chamber of parliament, and less often, to the both of them, if the position of the chambers are balanced (so-called bicameralism). In presidential or presidential-parliamentary systems, mechanisms for electing heads of state are also of the essence. In each of these variants, it is also possible to analyse the dependencies between electoral systems and party systems, in their complex vertical form (nationwide, regional and local levels). Such a picture, though incomplete, is, on account of its validity, sufficient enough.

First of all I would like to draw attention to the issues concerning the relationship between the expression of public volition and the filling of electable public institutions of a democratic state. In particular, I would like to seek an answer to the following questions: To what extent does public volition remain directly correlated with the personal composition of an institution of the state? Is the will of the majority of the active electorate an expression of the volition of the majority of society? Is the concept of majority considered an expression of a doctrinal volition of the general public (*volonté générale*), or is it only an instrument for the election and appointment of public authorities? These are not only doctrinal questions, as they need to be answered *via* empirical investigations and analysis of significant amounts of material from a number of selected, representative democratic European countries. The answers must therefore remain in the circle of the study of the factors that determine the division into constituencies, the methods for allocating seats within the borders of the constituencies, the methods of the distribution of seats between the electoral lists and the candidates, as well as the voting methods. In other words, it comes down to the organisational and institutional solutions of electoral systems, and also, to a certain extent, to the legal solutions. It is important, however, not to subject the latter aspect to a normative analysis, which is so typical of legal sciences. Regard also needs to be paid to questions about the relationships between the electoral and party

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<sup>4</sup> There may be several electoral systems in one state.

systems, and more broadly, between political systems. These are questions of fundamental, cardinal importance for the assessment of democratic systems. After all, a systemic approach requires that a study be made of the relationships between the accepted, doctrinally, but often also politically motivated, elements of electoral systems. Electoral systems form a specific organizational framework in which people make important political decisions. Issues related to the motivations of voters, that is concerning electoral behaviour and electoral marketing, shall remain beyond the boundaries of interest.

It would seem that the achievement of a direct and relatively simple relationship between the will of the public and the political and personal composition of the institutions of the state is something easy, that the essential and constitutive feature of modern democracy, namely free and fair elections, is fulfilled, as long as electoral votes have not been forged and have been honestly converted into seats.<sup>5</sup>

In addition, it is difficult to agree with the opinion that a political party that has won the elections, which is understood as having won more votes and seats than the competition, is the one that received the support of the majority of society.

This simple, and unfortunately, false correlation, has become part of the language of the politics of today. It has almost become a fetish stopping us from undertaking any reflection on its meaning and truthfulness. However, at this point it is worth asking, unreasonably as it may appear, the question whether it is at all possible to achieve an electoral result that would also constitute an expression of will of the majority of the population? If the answer to this question is affirmative, then it is so under one condition: it is achieved incredibly rarely. As a rule, in fact, the majority is nothing more than an expression of some form of a social minority. This belief is confirmed by a few simple comparisons: 1) the voter turnout (number of voters, and in fact the validity of the votes cast) compared to the total number of eligible voters (the electorate), 2) the outcome of the election (number of votes) of the victorious party, that is the one that won more votes than the competition on a nationwide scale, and 3) the conversion of votes into seats, using a method

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<sup>5</sup> There are so-called “clean” proportionality solutions, in which a simple conversion of votes into seats is practiced (one of its versions is the so-called “automatic allocation”). Votes are converted into seats on a nation-wide basis, and the motivation for the division of a state into electoral administrative districts is purely organisational. In such districts, seat allocation does not take place. Such a system was used in the Weimar Republic. However, even these solutions yield potential deformation. D. NOHLEN notes this phenomenon by indicating, among others, deformations resulting from the failure to ensure a minimum electoral representation (Compare *Sistemas electorales del Mundo*. Madrid 1981, pp. 366—367). An adjustment of the voting process in the constituencies involving a parallel or secondary allocation of the seats across the state was used on numerous occasions (Belgium, Czechoslovakia, Denmark, the Netherlands, Israel and others).

that usually produces different results with the same number of output data. Thus, if we consider an optimistic scenario with a voter turnout of approx. 70%, with the winning party having won more than 50% of the votes, which generally is not required as very often it is only necessary to obtain over 40% of the votes to receive more than 50% of the seats, then even with such optimistic assumptions, the winning party can govern alone with an absolute majority in parliament enjoying the support of about 30—40% of the electorate, or in other words the support of only about 1/3 of eligible voters. In other words, only with a turnout of about 90% and the support of more than 50% of the electoral votes, it can be stated that the voting majority constitutes the support of the majority of society. These results, however, occur rarely and are not necessary to ensure one party an absolute number of seats in parliament, and therefore a stable, one-party governance throughout the entire term of office. This, however, is not normally the case, and therefore, the assertion so often proclaimed by politicians that the winner enjoys the support of the majority of society is nothing but the acceptance of a false assumption that society constitutes the electorate, that is the part of it that has the right to exercise its cardinal political rights, and that received the support of more than half of the electorate. Therefore, one must assume that the majority today is nothing short of a contractual instrument for the election of public authorities in a democratic manner. So little and so much at the same time. The belief that the majority principle is based on a procedure dates back to early liberalism. “It does not guarantee a choice and therefore it does not guarantee the best, competent, effective and fair power” — claims Adam Jamróz.<sup>6</sup> It is only a directive, as the majority of the voting majority is rarely synonymous with the majority of the population. All the more so, as today, there is dominant a notion of a simple, normal, relative majority which is based on the advantage over one of the competitors, not on the majority in relation to all the others. The majority in question, though still used in places both in elections to collective and single-person bodies of government, is very often replaced in the subsequent round of elections by a simple majority. The conviction of the eighteenth century Enlightenment thinkers that only the *volonté générale* is an expression of an absolute majority had long ago faded into oblivion.<sup>7</sup>

Out of the many ways to identify and define democracy, we can still point out two basic approaches, that is two ways, within which we can find opposite positions.<sup>8</sup> The first include views that refer to the goals and values that should

<sup>6</sup> A. JAMRÓZ: *Demokracja*. Białystok 1999, p. 21.

<sup>7</sup> Not to mention the Polish concept of the *liberum veto* meaning that the majority means everybody.

<sup>8</sup> A synthetic presentation of the theory of democracy can be found in A. ANTOSZEWSKI: “Współczesne teorie demokracji.” In: *Studia z teorii polityki*. Vol. 2. Eds. A.W. JABŁOŃSKI, L. SOBKOWIAK. Wrocław 1998.



be achieved through democracy (teleological and axiological approach), and the second, which has remained popular since the announcement of Joseph A. Schumpeter's proposal, is to draw more attention to a formal, procedural approach, where the question of "how we govern?" seems to be more important. The words of Hans Kelsen stating that the use of the term *democracy* depends on the occasion and on the prevailing political trends, which it is the most abused political term assuming all sorts of contradictory meanings, still remains true. Giovanni Sartori adds that until the 40s of the 20th century we had known what democracy was. Since then, however, we have all come to like it, but gradually ceased to understand what it is. At the same time he writes very categorically: "Democracies exist because we invented them, because they are in our minds; They exist only insofar as we can maintain them. [Demokracje istnieją, ponieważ je wynaleźliśmy, ponieważ są w naszych umysłach; istnieją tylko w takim stopniu, w jakim potrafimy je utrzymać]."<sup>9</sup> He also refers to democracy as a by-product of "a competitive method for recruiting leadership."<sup>10</sup>

Democracy, in principle, does not have one theoretical model. One should rather bring it down to a very specific form. Very often we talk about the idea of democracy, but it is variable and, what is most important, it is a product of a specific debate situated in time and space. If we know and refer to its specific forms (without assessing whether they are or were justified), such as Ancient, Athenian, Bourgeois, Nobles, Liberal, Modern Democracy to name a few, we also express the view that there is no democracy in general, but only one of its types. Theoretical views on democracy, however, are more the result of the description and analysis of empirical, practical democracy than previous theoretical constructs. Democracy has disappeared as a cosmopolitan concept (timeless and spaceless). However, even though national democracies are predominant, neither did they develop nor did they operate in isolation and in vacuum. They interact with each other, creating political system solutions and standards of political practice. The influence of the external environment in the process of cultural diffusion is indisputable, and is of great importance for national democracies. It leads to the formation of a common plane of similar attributes of democracy. Provided they are accepted and preserved, they will successfully become the standards of modern democracy as products of culture. In order to describe the external environment of national democracies, I use the concept of transnational democracy, by which I mean a strictly defined group of standard solutions governing the law and constitution, political processes and behaviour of the political institu-

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<sup>9</sup> G. SARTORI: *Teoria demokracji*. Transl. P. AMSTERDAMSKI, D. GRINBERG. Warszawa 1994, p. 194.

<sup>10</sup> Ibidem, p. 34.

tions (including state institutions), the judicial system and social processes, as well as entities that developed and consolidated in the given cultural environment and time. This also applies to accepted, or at least tolerated political ideas of the democratic countries of a given cultural circle. The point is for certain concepts and categories to be understood, if not identically, then at least similarly or without contradiction towards one another. These standards have been established *via* long-term practice.<sup>11</sup>

Empirical, applied democracy differs from the postulated and desired democracy type. These differences are also visibly clear when we compare it to rationalised democracy, which utilises the experience and shaped standards of governance of other countries (mainly based on the rule of law), the political will of government exercised without restraint, in which democracy is seen not as an end in itself but as an instrument for achieving prospective or short-term political goals. The first and second understanding of democracy have repeatedly been the object of political bickering. Frequently, too, media and political speakers restrict themselves to using the etymological meaning of *demos* and *krateo*. The debate is sometimes brought down to a primitive, yet catchy interpretation: the rule of the majority (which is usually only a certain form of minority) cannot be subject to restrictions as, since it is a majority, it has the freedom to act as it pleases. Democracy without restrictions, without constraint, which serves to execute political volition (even of an anti-democratic nature) can quite easily become its contradiction. A theoretical and partly ideological understanding of democracy is often detached from political practice. This belief is not a discovery of our time. The dispute about whether a particular form of government is (was) a democracy, a political system conforming to the idea of democracy, has appeared quite often. Democracy, in its contemporary framework, boundaries and content is not, after all, a timeless absolute, but only a variation typical of our time. As every kind of value, democracy too is subject to gradual change in time and in space. It also changes in specific historical conditions. Democracy has become a myth. Stanisław Filipowicz characterises it thus: "Today, Lincoln's credo — the sentence found in his Gettysburg Address that democracy is »the government of the people, by the people and for the people« became the basis for a public profession of faith. In the trivialized version, ridden of a deeper meaning, but bearing enormous force as provided via the support of the media, it has created a closed horizon of eternal truths about politics. It turned into a myth. After all, it was conceived that liberal democracy is a definitive shape the world has assumed, that we have reached

<sup>11</sup> See also J. IWANEK: „Standaryzacja demokracji współczesnej.” In: *Studia nad współczesnymi systemami politycznymi: Księga dedykowana profesorowi Andrzejowi Antoszewskiemu*. T. 1: *Podmioty i procesy demokratyczne*. Eds. J. JUCHNOWSKI, R. WISZNIOWSKI. Wrocław 2014, pp. 174—176.



an end.”<sup>12</sup> Subsequently, however, the above observation inspired posing of the following cardinal question: “Freedom, participation, sovereignty, representation, emancipation, human rights, justice, the rule of the people ... These words can, of course, appear in various configurations, in all shapes and sizes [...] They form a horizon beyond which political discourse, in fact, tries not to transcend. But what do they really mean? Precisely.”<sup>13</sup> The axiological dimension of democracy understood as the pursuit of the common good is nothing but a continuous debate. As defined by David Held: “Demokracja jest jedynie »metanarracją«, która prawomocnie wyznacza przestrzeń mieszczącą konkurencyjne narracje naszych czasów”. Gdyż nie akceptuje się tylko jednej jej wartości, „... ale jako wartość traktuje łączenie i godzenie ze sobą konkurencyjnych recept” [“Democracy is only a »metanarrative« that legitimately defines the space for competing narratives of our time”. For not only one of its values is accepted, “... but combining and reconciling competing solutions is treated as a value in itself”].<sup>14</sup> This debate also means the inability to impose on others one’s own axiological construct and its interpretation. It will not go unnoticed that not so long ago, namely at the beginning of the 90s of the 20th century, it was popular to believe that the consecutive waves of democratisation would lead to the elimination of democracy’s competition (socialism), and as such it had a very strong chance of becoming a world system, a dominant form of government. Unfortunately, it was often ignored that democracy has its cultural roots and is dependent on a whole range of conditions, including, of course, ones that originate in civilization. Admiration, but also disappointment of this form of government, which appeared so powerfully in intellectual discourse as early as in the nineteenth century, has been made dormant today in part by the “impoverishment of the process of understanding” as Giovanni Sartori tended to refer to it. “Television produces images and destroys ideas; by doing so it weakens our ability to think abstractly and with it all, our ability to understand.”<sup>15</sup> Therefore, in fact, it makes it impossible to understand such abstract concepts as the nation, the state, the sovereign people, bureaucracy, etc., which, as invisible and theoretical concepts, make it possible to exercise control over nature and “the ability to create a political and economic environment.”<sup>16</sup> Paradoxically, the public media, which are the product of democracy, and which make the existence and functioning of democracy possible, are, on the one hand a blessing, but

<sup>12</sup> S. FILIPOWICZ: *Demokracja. O władzy iluzji w królestwie rozumu*. Warszawa 2007, p. 14.

<sup>13</sup> Ibidem, pp. 14—15.

<sup>14</sup> D. HELD: *Modele demokracji*. Transl. W. NOWICKI. Kraków 2010, p. 336.

<sup>15</sup> G. SARTORI: *Homo videns. Telewizja i postmyślenie*. Transl. J. USZYŃSKI. Warszawa 2007, p. 27.

<sup>16</sup> Ibidem, p. 26.

also a threat to a free, undominated democratic debate. It can also be claimed that mass manipulability is also a feature of modern democracy. While other authorities have a status which is to a greater or lesser degree regulated by law and political practice, media authorities are not subject to such regulations at all or only partly, and the competitiveness between them is greatly reduced.<sup>17</sup>

The belief that modern democracy is a representative, indirect democracy, with state institutions elected by the people despite initial resistance of part of the doctrine, has come to be under the clear influence of the political selection of the political system and years of practice. The principle of representation from the very beginning has been linked to the principle of national sovereignty. Collectivity, no matter how it was determined historically (*via* the people, nation, society), became a source of power, its object, and also, in practice, its subject. The problem how this representativeness shall be delivered, was from the beginning and still continues to be one of the foundations of this system. Was there a baseline model for the rule of representation, or rather, was there ever a model election system which would accomplish this representation? The answer to this question is negative. Initially, a majority system was used, as no other system was known. Nevertheless, it is worth posing the question in order to inquire about the sense and legitimacy of electoral deformities. The concept of deformation suggests unambiguously that there is such a state that differs from the desired state, a previously assumed state, a baseline model or a *formed assumption*. A fuller answer to this question, should we not wish to bring the issues of deformation down to the problem of the relationship between the index that is the percentage of votes obtained vs. the percentage number of seats in the collective representative bodies, is a matter of political doctrine, and also an issue, the result of an analysis on empirical democracy, which creates the so-called system standards of this form of government.<sup>18</sup>

Modern democracies have not only been reduced to representative democracies, which were so strongly contested in the first half of the nineteenth century, but in addition, the concept of the majority was reduced to what is called a simple majority. Thanks to such an approach, parties that frequently enjoyed electoral support of no more than between 10–20% (in relation to the electorate) are considered, falsely enough, as those that have the support of the majority of society. The phenomenon of over-representation and under-representation is, unfortunately, quite common. The problem comes down more to the scale of this phenomenon. Extreme manifestations of deforma-

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<sup>17</sup> See also J. IWANEK: „Czwarta władza w systemie demokratycznym.” In: *Władza, media, polityka*. Ed. M. GIERULA, co-op. M. WIEŁOPOLSKA-SZYMURA. Katowice 2006.

<sup>18</sup> See also J. IWANEK: “Standaryzacja.” In: *Władza, media...*

tion include a situation in which the winner who wins more votes than his competitors, in reality loses the election, yielding fewer seats. This issue concerns to a lesser extent the election of single-person authorities, as long as the election is direct.<sup>19</sup> However, the legitimisation to govern (*legitima potestas*) is in no way excluded. Nevertheless, it is worth differentiating between the legitimacy ranges and not confusing purely political legitimacy, which is the result of an election, with the so-called wide legitimacy, which refers to various, if not all spheres of social life. Such a broad validation of political power (in the sociological sense of total power) can even be harmful for democracy. Legitimacy, which is a function of the election result, is quite sufficient for this form of government. After all, legal legitimacy is maintained if all the regulatory requirements of electoral law are complied with. Tadeusz Biernat aptly concludes: "The treatment of legitimacy in a broader context means a consideration of the legitimisation process in relation to political activities, the underlying motives, broadly defined cultural conditions, and not only to the rules of creation and the exercise of power."<sup>20</sup> David Held, in assessing the genesis of modern democracy, notes the following: „Dążąc do demokracji widziano w niej mechanizm legitymizujący takie decyzje polityczne, które odpowiadają przyjętym zasadom, regułom i praktykom uczestnictwa, przedstawicielstwa i odpowiedzialności.”<sup>21</sup>

The *majority* we are interested in, that is its axiomatic form, is very popular. It produces a sense of power and community for the ruled, and gives a sense of mission for those in power. However, void of its ideological context, it refers to a mechanism for electing political power, that is an electoral mechanism. "[...] democracy, Edmund Wnuk-Lipiński notes, is thus rather a collection of procedures than an ideology... a form, a collection of formal rules and institutions, in the framework of which there is room for various ideologies, and each of them is formally equal."<sup>22</sup> On the other hand, failing to give consideration to its teleological and axiological constituents is undesired, even if there is no agreement as to the meanings. Adam Jamróz, who leans towards a "procedural" understanding of democracy, points out that "Democracy presents itself to us as a collection of values and rules relating to the functioning of society and the state."<sup>23</sup>

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<sup>19</sup> In this context, the results of the US presidential and vice-presidential elections of 2000 can be considered as an extreme example of deformation, although votes were of course converted according to the law. The person that won the election in terms of the number of votes, actually lost.

<sup>20</sup> T. BIERNAT: *Legitymizacja władzy politycznej. Elementy teorii*. Toruń 2000, p. 32.

<sup>21</sup> D. HELD: *Modele...*, p. 335.

<sup>22</sup> E. WNUK-LIPIŃSKI: *Demokratyczna rekonstrukcja. Z socjologii radykalnej zmiany społecznej*. Warszawa 1996, p. 39.

<sup>23</sup> A. JAMRÓZ: *Demokracja...*, p. 5.

Representative democracy is often in contradiction with desired and postulated democracy, also termed as “just” and “true” democracy. However, we are interested in answering the question: to what extent does the direct expression of the undistorted volition of the sovereign, which determines the political and personal composition of the state authorities, is related to the description of the conditions, which are directly responsible for ensuring and not ensuring such a composition? It is political elites, which are vested with the task of shaping electoral systems, in particular its legal aspects, that define these conditions. To a certain extent they are the result of the dominating convictions about the doctrine, about the electoral standards of democracy, but very often also about the given social and political situation. An electoral system may determine the entities that will win or lose the elections and as such may impact, to a certain degree, the electoral result even before the elections take place. The discussion is thus about the various conditions in which representative democracy functions as a concrete, contemporary version of democracy, conditions determining the actual election of social representation. They are at the same time fields of research which are of key importance to the methodology of electoral systems research.

### 1.1.

The rules of electoral law are without a shadow of a doubt the most important aspect of the research. One needs to keep in mind, however, that it is neither possible, nor desired to characterise all of them in their entirety at this point of time. It is nevertheless worth identifying those aspects of electoral law that may hinder the full expression of the will of the public, and distort it at the same time. I perceive the key electoral rule of universality in a negative light,<sup>24</sup> as a *ban on introducing group exclusion in the exercise of the active*

<sup>24</sup> A negative approach has the advantage of always constituting a short and complete description. Most often, however, if universality is defined — which is in no way a standard in works on electoral issues — it is defined as something positive. For example, D. NOHLEN writes: „Norma prawna powszechności wyborów oznacza, że w zasadzie wszyscy obywatele są wyborcami i wybieralnymi, niezależnie od płci, rasy, języka, majątku, wyznania, pochodzenia społecznego, wykształcenia, albo poglądów politycznych” (*Sistemas electorales...*, p. 65); L. GARLICKI writes that: “This rule defines a group of subjects who possess electoral rights, and requires that all legal age citizens of the state be entitled to at least an active right to vote” (*Polskie prawo konstytucyjne. Zarys wykładu*. Warszawa 1999, p. 124); W. KRĘCISZ also defines this rule in very similar terms (*Polskie prawo konstytucyjne*. Ed. W. SKRZYDŁO. Lublin 2004, p. 200; B. BANASZAK is one of the few people who define this rule negatively: “The rule of universality imposes a ban on excluding citizens of social groups incorporated in what constitutes the collective sovereign from the active right to vote” (*Porównawcze prawo konstytucyjne współczesnych państw demokratycznych*. Kraków 2004, p. 345.) This definition is closest to my viewpoint, except for the fragment dealing with the subjects that can be excluded.

*right to vote*.<sup>25</sup> Since the turn of the sixties of the previous century, this rule has been fully utilised in democratic countries, which led to the removal of the last obstacle, namely that of age,<sup>26</sup> however, there are new challenges we have to face these days. These are challenges which might outline the new boundaries of universality. Currently, a new minimum age of 16 years is being tested. However, the experience of some countries (e.g. Austria and partly also Germany and Slovenia)<sup>27</sup> will determine the further evolution of *homo politicus* and a new age defining the political maturity of modern man. Previously, these types of solutions were used rather in non-democratic systems (e.g. in Nicaragua in the 80s of the 20th century)<sup>28</sup> than in democratic ones. The same situation concerned the minimum age of 18 years, which was so quickly adopted by non-democratic states, very often beating the 20th century democracies in its implementation. The creation of these regulations in systems with non-competitive elections most probably resulted from the conviction that they will be more conducive to the manipulation of young people. Utilizing children and youth by terrorist groups and totalitarian states is a phenomenon which is well known and described. Young people, also those in democratic states, who do not have the necessary life experience, are more vulnerable to techniques aimed at manipulating their consciousness.

A precise analysis of this issue, however, remains the responsibility of researchers in social psychology.

It appears that the age limit for active suffrage should remain directly correlated with the moment of gaining full legal rights, as the right to vote is often derived from the civil law. Nevertheless, allowing citizens between the ages of 16 and 18 to vote may change political results of elections of many traditional political parties as well as impact election marketing methods. A differentiated age structure of society will diversify the scale of this phenomenon.

## 1.2.

Citizenship is another issue related to active suffrage. European integration has introduced significant changes in this field. This concerns not only

<sup>25</sup> This means that individual exclusions based on court rulings are acceptable, while in the case of the passive right to vote it is possible to go as far as introducing group exclusions as well.

<sup>26</sup> The minimum age of 18 years was removed much earlier in political systems which employed uncompetitive elections, but it is for this very reason that this circumstance cannot be taken into consideration.

<sup>27</sup> Compare: M. WASZAK, J. ZBIERANEK: *Propozycja obniżenia granicy wieku czynnego prawa wyborczego do 16 lat*. Warszawa 2010.

<sup>28</sup> The aforementioned authors are unjustifiably surprised that this minimum age has already been lowered in undemocratic countries: "Paradoxically, undemocratic regimes often lower the minimum age." Ibidem, p. 4.

electoral laws at a local government level, but also elections to the European Parliament. The criterion of citizenship is being replaced by the residence address criterion, hence raising the significance of the old rule of domicile. At the same time attention is turned to the issue of the right of suffrage of the citizens of a state who permanently reside outside its territory. This concerns not only EU Member States, in which the freedom of movement and choice of the place of residence is one of its fundamental rules, but also other democratic states. However, there are no clearly defined international standards in this respect.<sup>29</sup> The utilization of active suffrage with regard to a state, of which one is a citizen, but in which one does not reside permanently, and on which one may have an impact without having the knowledge its actual residents possess, is a matter provoking much controversy. The rights of this group of citizens result, after all, from their formal status, and the results of their political decisions do not affect them directly. This issue is solved in a variety of ways. The most common solution is granting a full active right to vote, though the regulations governing it may raise doubts as to whether the rule of equality has not been violated. For example, in Argentina, where voting is obligatory, this group has been excluded from this obligation, whereas Polish law allowed this group to vote by post in the elections to the Sejm and the Senate (acc. amended act of 2014). The second extreme approach to the issue is revoking their right to vote (Chile). What makes this solution worth contesting is the fact that a gross part of Chilean immigrants emigrated during Augusto Pinochet's totalitarian regime. By choosing their place of residence in another country, they often did so to avoid the persecution of the military regime. The third approach, if we were to ignore a method involving the introduction of various restrictions in voter registration and limiting accessibility to polling stations, is the one introduced in Italy, which involves the creation of constituencies abroad. Apart from being allowed to vote in these constituencies, a certain number of seats are allocated thereto as well.<sup>30</sup> In this way citizens were provided with the possibility of unobstructed participation in elections while living abroad. Nevertheless, the number of allocated seats therein is not considerable, not to say symbolic — that is 2% to the Chamber of Deputies and the Senate. In Croatia, however, where a similar solution

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<sup>29</sup> The European Commission for Democracy through Law operating under the European Council (the so-called Venice Commission) adopted in 2002 the Code of Good Practice in Electoral Matters (CDL-AD (2002)023-rev.Or-fr), which states only that electoral rights can be granted to citizens residing outside of their country. The Commission also commented on the minimum age for voting, recommending that it be bound to the moment of gaining full civil rights.

<sup>30</sup> Along with constitutional acts Nos. 1 of 2000 and 1 of 2001, 12 MPs and 6 senators are elected in foreign constituencies. Compare T. GROPP: "Forma rządu a systemy wyborcze we Włoszech." *Przegląd Sejmowy* 2007, No 6, p. 56.



has been employed, this share is significant. There, the number of seats in the special foreign constituency is 10% (14 seats).<sup>31</sup> A solution was also discussed, whereby a time limit for living abroad would be introduced, and once exceeded, the voter would lose their active right to vote (such a solution was discussed in Croatia). On a comparative scale, this phenomenon cannot be precisely determined. The reason for this is that information concerning this issue is not registered everywhere.<sup>32</sup> Without a doubt, the citizenship criterion competes with the domicile rule, which surely has an influence on the current shape of the principle of universality.

### 1.3.

The scope of the passive voting right has been and is subject to considerable limitations. The differentiation of age in comparison to the active right to vote is quite common, although there are regulations aiming at equalizing the criteria of one and the other right. Citizenship is usually also an obligatory requirement. This is also true for the domicile rule, though the solutions are more diverse in this respect. Restrictions on incompatibility and on a ban for running for office are a key issue. These are very important premises for the functioning of the rule of law. The ban on running for office (an absolute ban, albeit a conditional one) applies to certain professional groups (mainly professional soldiers, officers working for paramilitary organisations, for the police, prosecutors, judges, etc.) and persons performing official functions for set terms (ombudsmen, constitutional court judges, state council members, civil services corps members, ambassadors, councillors, etc.). It also refers to restricting re-election. These solutions are common, however, their details differ from country to country. Incompatibilitas refers to the formal and material, as well as to the absolute and relative. The ban on holding two seats, though the ban on holding seats both in the local government and parliament appeared relatively recently, can be viewed also from the point of view of the separation of powers.

The issue of the right to run for office also refers to the regulations on the nomination of candidates. These regulations are all the more important in those countries in which obligatory elections are employed. There, the voter has the obligation to decide who to vote for. Therefore, making sure that the voter is presented with a complete offer of politicians and political programs (using the language of mercantilism ever so popular in politics) is very important.

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<sup>31</sup> Compare art. 40 of the act on the elections to the Croatian parliament of 9 April, 2003 (*Narodne novine* 1999, No 116; *Nard one novine* 2000, No. 109; *Narodne novine* 2003, No. 53).

<sup>32</sup> For example, in Spain it is 3%—4% of the electorate.

Political parties, especially parliamentary parties, are dominant. This also refers to citizen groups, or associations. Their participation is considerable and relatively common, especially on a local government level, or as some may put it, a sub-central or sub-state level. A multifaceted system for the nomination of candidates by political parties (in a legal sense) and other formalised subjects requires a change of the concept of a political party as understood by political science.<sup>33</sup> In order to create optimal conditions needed to provide as complete an electoral offer as possible, it is essential to ensure the freedom of nomination, including the Anglo-Saxon tradition of self-nomination, provided these candidates have some minimal initial public support. In other words, a solution involving the simultaneous restriction of the passive right to vote inclusive of a broad freedom of nomination of candidates seems to be an optimal solution. Extending the electoral offer (if we are to continue using mercantile language) will at least create the conditions for increasing the turnout and bring us closer to the expression of public volition.

#### 1.4.

The requirements of voting secrecy are an issue which is directly correlated with the election rules. The most comprehensive meaning of this rule comes down to rendering the ballot fully and completely secret.<sup>34</sup> The surveillance methods of today require the introduction of new safeguards. Information about our political preferences could potentially become great material for electoral marketing projects, which could include manipulation techniques. An old rule by which political parties resorted to an arsenal of ideological arguments and programs that articulated the political interests of social groups to which the parties then try to convince the voters, is no longer of any importance for many parties. Many parties running in elections are completely pragmatic and act on the whim of the prevailing political situation. Not only are they ridden of ideological traditions, but they fail to have any strategic programs too. They are ready to voice their support for

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<sup>33</sup> Bearing this in mind, a political party is a mass, clearly identified formalised social group, which articulates its group interests and acts on the basis of a political program that corresponds with social ideals, and which in performing its public functions pursues its objectives *via* the hierarchical central and local state institutions or its relatively autonomous structures (territorial self-government, local autonomy, federal bodies). See also: J. IWANEK: "Partia regionalna, partia lokalna, regionalne i lokalne systemy partyjne — aspekty teoretyczne." In: *Autonomia terytorialna w perspektywie europejskiej. Regionalne i lokalne partie polityczne i systemy partyjne*. Ed. J. IWANEK, W. WOJTASIK. Toruń—Katowice 2014.

<sup>34</sup> B. Banaszak expresses the opinion that secrecy means safeguarding the voter against anyone discovering what his or her choice was. Compare B. BANASZAK: *Porównawcze prawo...*, p. 364.

any solution that in the eyes of spin doctors can bring about victory, only to thrive on the bounty provided by state institutions. For this reason, the parties first analyse what the voters desire, remembering at the same time that these desires very often are the products of mass culture which are co-created, stimulated, popularised and initiated by the mass media, only to be later adapted and incorporated in slogans as well as tabloid and anti-intellectual electoral programs. Parties that do not utilize manipulative techniques will not survive in a manipulative type of democracy. After all, the revolts of the disgruntled (delicately put) that took place in several European countries several years ago have shaken, albeit delicately, the contemporary form of representative democracy, which in fact is the democracy of political parties.

We can say that today we live in an aquarium, surrounded on each side by cameras and microphones. We are being assured that this is done for our own good, that is a conceptualisation of good put forward by the rulers. A historian specialising in political systems will surely remind us here that ever since totalitarian regimes came to be, any restriction of the rights of the individual have been normally explained by the necessity to ensure safety. This is an issue that has existed since the Roman Republic, an issue between dictatorship and republic rule.

The danger of surveillance also concerns postal voting. Especially if done outside the country. There are no effective measures safeguarding against the disclosure of the will of the voter. This may result in the same situation as was the case when US military personnel stationed abroad were allowed to vote by fax (i.e. openly).

Voting *via* a representative also leads to a real, and not only potential, violation of secrecy. On the one hand it allows disabled people to use the cardinal political rights (according to calculations, this concerns several percent of potential voters). On the other hand, equally importantly, it is another determinant of the voter turnout. There is, however, a question about whether this contributes to a violation of the secrecy principle. After all, the voter has to disclose his political will to his representative. Doctrinally, the judgment over a conflict created thus between secrecy and actual use of the cardinal rights should nevertheless be made for the benefit of the voter, especially given that the voter themselves decides who to share this information with.<sup>35</sup> Otherwise, this would mean that a considerable number of voters, in the range of several percent, would be ridden of their political rights.

Similar reservations can be made with regard to the so-called e-voting method. In this case, the voter needs to be identified by the voting admi-

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<sup>35</sup> There are many viewpoints that secrecy is not only a law but an obligation of the voter.

nistrator's system, and then their vote needs to be qualified respectively.<sup>36</sup> Therefore, in e-voting, the secret ballot principle works only with regard to the electoral institutions of the state. Many issues relating thereto will most probably be solved along with the introduction of new software. It cannot, however, go unnoticed that in countries covering vast territories and with a small density of population, this method of voting is a great help in the exercise of political rights. In both of the cases, these solutions contribute to an increase in the voting turnout.

### 1.5.

The principle of equality, in its formal shape, is not violated today. Apart from a few exceptions, the various kinds of privileges that were enjoyed in the past are no longer exercised either. Nor it is violated by legal differentiation of voters between various constituencies (e.g. the use of a multiple vote dependent on the number of seats in a constituency diversifies this legal situation). It is, however, violated by creating different and better conditions for national minorities. This solution is nevertheless commonly accepted.<sup>37</sup> Candidates of national minorities, should their rights be levelled off with those of others, would otherwise have poor chances for winning seats. It may be a factor contributing to deformation. Scale-wise, however, this would only apply to a limited extent. After all, the concepts of "political nation" or "state nation" do not take into account ethnic features. For this reason, I understand the **equality principle** as the guarantee of an identical legal situation for the voters in a given constituency. For this very reason, I do not share the opinion that the equality principle, from the point of view of comparative constitutional law, can be understood as a guarantee for giving one vote to every voter.

The material equality of elections, that is the equal power of a vote, is very difficult to attain, not to say impossible. Jerzy Jaskiernia aptly pointed out that the equality principle not only signifies the same power of the vote in terms of its protected value, but also the existence of defined procedures, which should provide for such a guarantee.<sup>38</sup> It is also questionable, in my view, whether the equality principle should be applied with regard to the passive right to vote. The aforementioned exclusions, which for democracy are often very desirable, are an obstacle in the creation of an identical legal situation for voters-candidates.

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<sup>36</sup> This issue is discussed in the literature e.g. in D. MIDERA: "Głosowanie przez Internet a demokracja." *Studia Politologiczne* 2011, Vol. 20.

<sup>37</sup> Such exceptions are also permitted by the mentioned Code of Good Practice in Electoral Matters.

<sup>38</sup> J. JASKIERNIA: *Zasada równości w prawie wyborczym USA*. Warszawa 1992, p. 21.

## 1.6.

The direct election principle needs no special explanation. I do not share the view that directness also means the need to vote in person.<sup>39</sup> After all, it refers only to the direct relationship between the voter and the candidates, that is it signifies single-stage elections. Directness is nearly universal. Nevertheless, wherever different solutions have been put in place, deformations, often significant, take place. An extreme example of deformation is the US presidential election of 2000.<sup>40</sup>

## 1.7.

Free suffrage is a concept that provokes much discussion. Very often we hear voices stating that since elections are universal, equal, secret, direct and are conducted in conditions of political competition, it means at the same time that they are free. The evaluation is not made any easier by the fact that the issue is treated variously in comparative constitutional law.<sup>41</sup> Free suffrage is mentioned in the constitution of the German Federal Republic, Italy and Turkey. The Spanish constitution, in article 68, section 1 in reference to the Deputies Congress mentions freedom as the second, after universality, electoral principle.<sup>42</sup> However, many other constitutions make no mention of this whatsoever. The analysis of the range of this concept, including the comparative legal regulations and possible dangers, appears to be fully justified, not to mention necessary. Analogically, as in the case of the universality principle, in this case too, I perceive the principle of free suffrage in a negative light, that is as the *direct or indirect influencing of the voter in the course*

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<sup>39</sup> Very often the directness of elections is also discussed in the case of voting through a representative. In my opinion, the rule applies only to the direct relationship between the voter and the candidate (single-stage elections). Various means of voting that include postal voting, voting *via* devices outside of the polling station or voting *via* a representative, which are being developed today, relate to the issue of individual voting. Otherwise, it would have to be considered that the direct election rule is being replaced by indirect elections. Not only is this not true, it would also violate the rules of democracy.

<sup>40</sup> As noted by R. LUDWIKOWSKI and A. LUDWIKOWSKA (*Wybory prezydenckie w USA na tle porównawczym*. Warszawa 2009, p. 106) the election of 2000 "called into question at least three elements of the American legal system: the concept of horizontal power function distribution, the interstate regulatory, executive and judicial institutions, and the concept of the election of the president by the electoral college."

<sup>41</sup> The Polish electoral laws after 1990 can serve as an example. In one of them it is mentioned, while in others it is omitted.

<sup>42</sup> What is interesting, proportional elections to this chamber are not dealt with in this regulation but a reference is made to the applicable law. Compare article 68, section 1 of the Constitution (Constitución Española de 27 de diciembre de 1978, Boletín Oficial del Estado nr 311 de 29 de diciembre 1978).

of the election process as to whom he or she should vote for.<sup>43</sup> This is the first and most important aspect of this principle. Particularly important are regulations on election silence, which it is so difficult to maintain these days, but which is also contested by politicians. Election silence, often impossible to ensure objectively (in states with various time zones, but also in the case of voting over longer (several-week long) periods, is nevertheless justified. I would take caution against resigning from it altogether just because it is difficult to guarantee in our world of global communication. I am also not convinced by arguments that there is no way to defend against or undertake a polemic against unjustified election accusations shortly before the end of an election campaign. After all, the same issues may arise at any time during the elections, even before the election silence period is put in place. A solution to this problem could possibly include strict sanctions, e.g. the revoking of the right to a seat or very high fines in the case of false accusations. Apart from the legal regulation aiming at ensuring the conditions for a safe, calm and politically neutral polling station, many research issues fall beyond the framework of our discourse. The reason for this is that they relate to election behaviour.

The second aspect of the free suffrage principle looks slightly different. It refers to the issue of obligatory elections. It is not a problem of significant weight, especially given that obligatory elections are a very rare find these days. Nevertheless, the question of whether electoral absenteeism should be penalised in a democratic system is key. Most importantly, there are doubts as to its doctrinal nature. In my view, the right to absenteeism, the right not to vote is as strong a right as voting in itself. Logically speaking, these are two sides of the same electoral behaviour, that is the passive and the active side. If we claimed the opposite, we would have to accept that a voter who has been compelled to vote will be sure to find in the electoral offer a choice he or she can relate to both in terms of the candidates, political parties and their platforms. Such a conviction, however, has not right to exist. There will

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<sup>43</sup> In most cases, however, positive descriptions are used. For example, B. BANASZAK (*Porównawcze prawo...*, p. 366) notes that everybody can take advantage of the active and passive electoral right one is eligible to, freely without any physical and psychological coercion or other external influences. It assumes political pluralism, free competition of parties in election campaigns and freedom in proposing candidates. Compulsory voting is also questionable from this point of view. A. ŻUKOWSKI (*Systemy wyborcze*. Olsztyn 1997, p. 34) in turn writes that the fulfilment of other adjectives provides for freedom of elections, plus other features such as competitiveness, periodicity and finality. M. Kruk-Jarosz believes that the constitutive meaning of this rule is much weaker and fragile than other principles. Free elections are: the competition between candidates and political options, freedom of expressing volition by voters (with no restraint), fair carrying out of the electoral procedure. J. BUCZKOWSKI makes no mention of it (compare *Podstawowe zasady prawa wyborczego III Rzeczypospolitej*. Lublin 1998).



always be a part of the electorate who will never find anyone or anything suitable in an election to justify his or her active part therein. In addition, the penalisation that can be used in this situation cannot discredit the law. For this reason, an evaluation of obligatory elections from the point of view of their conformity with the free suffrage principle should most importantly be dependent on society's level of political awareness. In other words, one should take into account whether or not such an election would be considered by the voters as free. It is also important whether there has been a long time tradition of obligatory elections. The direct influence on the turnout of such an election is undisputable. However, a full and complete picture will only be produced after we compare the turnout levels in elections that are no longer obligatory, and after analysing the scale of invalid votes.

## 2.1.

The relationship between eligible voters (the electorate)<sup>44</sup> and the number of people enjoying this right, that is active voters, is an important characteristic of electoral systems. A study of electoral systems, as mentioned before, is carried out on four main planes: the state level, the regional level, the local level and the transnational level. This distinction seems to be necessary due to the differentiation of the electoral law. Most frequently, in the first case, it is the citizens of a state who have reached a required age that are eligible, while in the second and third case the condition of domicile also comes into play. However, we must remember that domicile may also cover foreigners residing permanently in the country. The first plane is easy to define, however under certain conditions. It is simple to indicate the relationship between the overall population and the number of persons who qualify on a state-wide level. Comparing statistical data is not problematic, especially given that the registration of people with the right to vote is generally carried out consistently or periodically, before an election. It is much more difficult to conduct a comparison in regional electoral districts. This is true for elections to national institutions, except for the situations where the territory of the entire state constitutes one electoral district, and in elections to regional or local councils. In these cases, the situation will become differentiated depending on whether or not the electoral districts overlap with the territorial borders within the state. In the second case, up-to-date data is not always available. Committees determining the number of members in the particular districts,

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<sup>44</sup> D. NOHLEN draws our attention to this issue (*Prawo wyborcze i system partyjny. O teorii systemów wyborczych*. Warszawa 2004, pp. 77 and 277) pointing to the constitution of Portugal of 1976, which recommends taking into consideration the number of those eligible to vote, also as a criterion for determining the borders of constituencies in British regions.

the co-called border committees or electoral authorities, are required to periodically verify the number of people qualified to vote in light of adjustments made with regard to the districts' boundaries (most frequently these are single-member districts), or in light of the determination of the number of seats in districts with reasonably permanent boundaries (the case in multi-member districts). There are surely these kinds of differences in particular democratic states, not only in terms of the various age structures of the population, but also with regard to the number of foreigners living in the countries. The average rate of eligible voters compared to the country's population is ca. 80%. It may, however, be wholly different in its particular constituencies. Manipulating with constituencies has been known for years and is referred to as malapportionment or gerrymandering.<sup>45</sup> Even if it is difficult to make an accusation that constituencies have consciously been manipulated with, one way or another, the imbalance between constituencies is one of a series of significant causes of deformation. Determining the relationship between a representation mandate and the potential number of voters, still remains a very difficult issue and is a key cause of deformation. This remark concerns both single-member and multi-member constituencies. Very often adjustments are made in the course of the initial apportionment of seats for the particular regions. The British example clearly shows that the determination of the boundaries of a single-member constituency, from the point of view of a horizontal seat-voter relationship is very difficult indeed, and disproportions between the constituencies even at the formal stage (initial stage) are considerable. Multi-member constituencies, though they tend to limit this disproportion, are far from eliminating it altogether. The electoral law goes as far as permitting it to become even greater.<sup>46</sup> This may concern both majority systems and other systems as well. First of all, each constituency is allocated a certain fixed number of seats, regardless of its number of residents or eligible voters. This solution, though necessary, as otherwise there would be constituencies with no seats apportioned, from the point of view of representativeness may breed deformation. The outcomes are diverse. From one seat per constituency (in the USA in the elections to the House of Representatives) to its multiplicity.<sup>47</sup> When determining the number of the remaining seats, methods

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<sup>45</sup> We must remember that gerrymandering has several meanings and manipulating the borders of constituencies is only one of the meanings. Compare J. JASKIERNIA: *Zasada równości...*, pp. 126 et seq.

<sup>46</sup> B. Banaszak, in discussing the Polish local government law of the 90s, notes that it was possible to adjust the borders of constituencies by as much as 20% due to the economic, spatial and social conditions determined by social bonds. See: B. BANASZAK: *Prawo wyborcze obywateli*. Warszawa 1996, p. 31.

<sup>47</sup> For example, in Spain, there were three deputies per province (in the Real Decree-Ley 20/1977 pre-constitutional regulation of 18 March). The organic function (LOREG

analogous to those used in the apportionment of seats between the electoral registers in the constituency are often employed. Also, in the electoral system to the European Parliament, on the basis of the Lisbon Treaty, a minimum number of seats for each state was announced in addition to the method of degressive proportionality in the apportionment of seats between the Member States.<sup>48</sup>

A comparison between the real, actual results of the elections in all of a state's constituencies and the simulated results, which would be achieved if the entire state was a constituency, produces a very clear picture of deformation. The scale of deformation is, most importantly, the result of the differences between the constituencies. This is not only about the mentioned differences in the relationships between a seat in a constituency and the number of eligible voters per seat, but also about the differences in the turnouts in the constituencies, that is, about the materially differentiated strength of a single vote. This comparison requires the use of a specific mathematical method, but this necessitates one condition to be fulfilled: the use of the same method for the seat apportionment as was actually used in the constituencies. This, however, will not be possible in each case (e.g. in reference to certain forms of multiple votes). The phenomenon of over-representation and under-representation may, however, be identified quite clearly. Some electoral systems in this situation reapportion their seats (Sweden) or introduce national lists in addition to the constituency lists.

In the apportionment of seats between constituencies in elections based on popular representation, there is at least a pursuit for maintaining a formal balance, while in elections undertaking to establish a territorial representation, the deformation is much greater. The division of seats between constituencies is usually carried out *via* a fixed indicator or one that is slightly differentiated.<sup>49</sup> This is understandable to a certain degree since, after all, elected institutions, especially those in federal states or states that are heavily decentralised, have a different systemic function. In this situation, the delivery of a social representation, which is a function of the election process, becomes less essential.

nr 5/1985) kept a minimum number of deputies (102 seats in total out of an overall number of 350). According to the Polish electoral law, there is a minimum of seven MP seats in a constituency. This issue was regulated in detail in the first Polish electoral laws.

<sup>48</sup> A. MISZTAŁ aptly points out that despite this declaration, this method (*Degressive proportionality and the shaping of the composition of the European Parliament*. Wrocław 2012, p. 75) was not precisely defined (i.e. *via* a mathematical equation)

<sup>49</sup> An example of a fixed number of seats is illustrated by the American Senate, as well as the Spanish Senate (four seats per province, with a modification for island provinces, and a representation additionally supplemented with designated regional senators). An insignificant differentiation of seats can be found in Germany, though the Bundesrat is a non-electable chamber operating for no defined term).

## 2.2.

The relationship between the electoral systems and the number of seats in collegial bodies appears to be an important factor. The achievement of both a broad social representation in collegial bodies and the effectiveness of their operation is surely not an easy task. The representative bodies of most of today's democracies have many members. Generally too, regardless of the criticism of second chambers, which, to a certain extent results from a periodic trend, they function effectively and a considerable number of MPs, and in many cases a considerable number of second chambers' members as well, is no hindrance to their effective functioning. Apart from that, parliaments with many MPs present a potentially greater social representation, thus expressing a greater range of socially differentiated political preferences. From this point of view, one may say that the number of elected representatives is a determinant of fair elections. This is true not only for the proportions between the electorate and the number of allocated seats, but also about the relationship between the political image of the parliament and the political image of society. The proportion between the number of voters and the number of parliamentarians, that is the ratio between the population and one representation mandate is an important prerequisite defining the functioning of a democratic system. The fewer people there are per one seat, the more the rule of representation is fulfilled. This is because such a situation creates better conditions for pluralism, which is ever so desired in democracy, and better secures against the political domination of one party, potential manipulation and dependence of MPs on a small group of political parties. The more entities there are, the more difficult the decision-making process is, but, on the other hand, the more effective is the functioning of the political control system and of political competitiveness.<sup>50</sup> The parliaments of Great Britain, France, Germany, Italy and Spain all have very numerous assemblies. A political change involving a decrease of the number of representatives, which often constitutes a political promise, combined with significant electoral deformation, restrictions on the control over the constitutional judiciary system, control of the role of the mass media, may deform the political system, and may, in consequence, signify the beginning of its demise.

## 2.3.

Selection of the electoral system, including the seat apportionment method, is without a doubt a political choice. The majority system, which is

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<sup>50</sup> This is highlighted by W. WOJTASIK (*Funkcje wyborów w III Rzeczypospolitej. Teoria i praktyka*. Katowice 2012, p. 47) who states that "elections constitute a means to solving political conflict, thanks to which a hierarchisation of political priorities takes place and solutions that yield as broad a level of acceptance as possible are sought."

historically the oldest, has not been much appreciated in present-day European democracies. Apart from the oldest European democracies, that is Great Britain and France, states that decide to implement it are few and far between. Proportional systems are the dominant solution, followed by systems that are also known as mixed systems. The methods used to apportion seats have been well defined in the literature, hence it will suffice for taking a closer look only at how electoral systems are qualified. This issue leads to misunderstandings, especially when the names of the founders of a method are not used. Apart from that, some of them may yield, in specified conditions, identical results of an election. This should urge us to treat these methods as identical. It is also worth noting that we are dealing with a wide range of solutions and a long period of their implementation. 1855 is considered as the date when methods for dividing seats between lists in proportional systems began to be used. It needs to be remembered, however, that they had been invented earlier and adopted when seats were divided between constituencies (USA). Paradoxically then, proportional quotient methods were first used in majority systems. One of the first methods used were those of the American politicians: Alexander Hamilton, Thomas Jefferson, John Quincy Adams and Daniel Webster.<sup>51</sup> It also seems worth paying attention to their descriptions and classifications, which introduced modifications, leaving their mathematical formulas in place, but changed the output values, that is the symbols description in subsequent arithmetic operations. All this taken together compels us to use very precise scientific language, not only in the description of the methods, but also in the evaluation of the electoral results achieved.

## 2.4.

Electoral thresholds and bonuses are definitely those regulations that have a direct impact on the deformation of voting results. This is because they result from the acknowledgment that the function of the political creation of state institutions and of the stabilisation of the system of government are superior to the social representation function. Thresholds are an artificial, legal element, which though justified in so-called young democracies, as they protect against the anarchisation of political life, begin to lose their right to exist in stable democracies. There, thresholds may even inflict harm by hindering the entrance of new groups into politics. They are known better for protecting traditional parties than for stabilising the system of government, which does not require such a form of artificial stabilisation. Threshold limits are most frequently determined percentage-wise in reference to the number of votes received. Their most restrictive form are the restrictions

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<sup>51</sup> Their descriptions can be found, among others, in B. MICHALAK, A. SOKAŁA: *Leksykon prawa wyborczego i systemów wyborczych*. Warszawa 2010.

imposed on a national level. Normally, they are also more distinctly different for individual parties than for their coalition alliances. The second solution may also be a hindrance in the establishment of such pre-election coalitions, which proves that a stabilising function played by threshold barriers is all the more difficult to achieve. After all, it is the pre-election coalitions in dispersed party systems that constitute system stabilisers, and not the other way around. Even though the average threshold scale can be identified as between 3% to 5%, the accepted solutions are more differentiated and range from a few per mil to up to 20%. Normally, the values are higher in elections to second chambers. Other than percentage-based methods of determining thresholds are used much less frequently. Thresholds also tend to be used for the so-called secondary allocation of seats. Here, parties that have exceeded a determined, generally higher, electoral threshold (e.g. in Sweden in the elections to the Rikstag) qualify as eligible. Determination of the scale of deformation for a researcher is not a simple task. A comparison between the effective results, constituting the number of seats achieved, and the number of seats achieved through the electoral lists requires gathering data from many polling stations in particular constituencies. Though this is not impossible, it requires long-term and incisive observation and research.

It is also without a doubt that electoral bonuses for groups which lead in an election, deform the will of the voters. Bonuses may be defined in simple terms (the winner takes all, as in majority systems with multi-seat constituencies), or through the determination of a high electoral result at over 50% of the votes in a constituency. A bonus will make it possible to win additional seats for parties which have received the most votes. One of the most prominent examples is an Italian solution, the so-called “legge truffa” developed in the fifties.

## 2.5.

The stability of an electoral system is a key prerequisite that influences the functioning of a system of government. Undoubtedly, the stability of the law allows not only responsible functioning of the institutions of a state in harmony with the principles of a democratic state based on justice and integrity, but is also conducive to the shaping of the legal culture and democratic tradition. One of the conditions of democracy is, after all, the acceptance of its objectives, values and procedures by society. Furthermore, tradition establishes the boundaries for political change and the autonomy of law in relation to the political situation of the current system of government. Only because a party has been given the mandate to manage state institutions for a determined term does not mean it can rule as it likes and disrespect the constitutional values and the principle of the law of a state. In this context, even



such electoral systems, which are ridden with defects, stimulate the shaping of socially acceptable procedures, including the treatment of elections as the only path for political change, and the respect for the election results. Such a rule, which is addressed to a political minority, benefits the minority in the long-run. After all, a minority may in the future become a parliamentary majority and will rightly expect its victory to be recognised. Stable electoral systems also have a positive influence on the electoral turnout. This is proven by information gathered from mature democratic states. Furthermore, there are examples when this temporary and radical change of electoral systems introduced shortly before an election delivered defeat to those that introduced it. The stability of the electoral law is also an important factor to be taken into account. It allows one to recognise, describe and diagnose the long-term trends in the process of the election of public authorities and, in consequence, to establish a set of comprehensive proposals for future reform based on research results.

## 2.6.

The turnout does not only constitute an important indicator of democracy that tells us a lot about the condition of civic awareness, but is also an important gauge that informs us about the actual social support for particular political parties or other structures into which society is organised (associations, formalised citizen groups, self-appointing candidates). The way the turnout is organised differs between democratic states and varies depending on the type of election. Turnout levels range from a dozen or so (in by-elections) to around 90% in the case of some parliamentary elections. The range is thus very broad and becomes even more so if we relate the turnout to the population. In an ideal democracy, the greater the turnout, the better. However, parties rarely win more than 50% of votes.

## 3.

Representative democracy finds a specific type of competition in what can be referred to as opinion poll democracy. Opinion poll publications not only are an element of contemporary political practice (there have been cases where governments collapsed as a result of poor opinion poll ratings), but they lead to many other consequences.

The issue is not with carrying out polls or making predictions on the outcome of an election. Just how important opinion polls are is clear and needs no explaining. Polls are often made on the order of political parties or the mass media. It is necessary, however, to take a look at how the results of the polls are published. Very often they are presented in a simplified form, without reference to the research methods used, the size of the test sample

etc., the results of which are of a political nature, especially when published in the pre-election period. Opinion poll results impact electoral behaviour. The results also impact the further course of the development of the government's behaviour. Very often, political parties adjust their programs to improve their ratings. As a result, the benefits of the term-based nature of representative democracy, which is supposed to guarantee not only the periodic stability of public authority but also the periodicity of public control needed to ensure that the political program of the party in power is carried out, is greatly reduced. The pressure exerted by opinion polls determines how the governing authorities adjust to their results. Parties are slowly becoming "catch-all" type parties, that is parties that change their behaviour depending on the political situation, and politics is losing its ethical standards. The political role of the mass media, which are more and more becoming a party in political disputes, is also rising. It is important to remember that the fourth power (I have always considered it to be the first power) can act with much more freedom, under minimum legal regulations and a negligible responsibility in comparison to the other powers. Present-day democracy has undergone a significant transformation. The issue is not about belittling public opinion, but rather about the danger posed by the constant pressure it exerts, which is often tainted with political interest. Public opinion, which is often externally shaped, is artificially enhanced by so-called expert opinions. There is no other way to refer to several-second-long speeches made by respected personalities to legitimise a selected item of information. Giovanni Sartori talks about the special role of TV, an image medium, which he refers to as videopolitics. These are his words: „Demokrację określano często jako rząd opinii i ta definicja okazała się wyjątkowo trafna wraz z pojawieniem się *videopolityki*. Ponieważ to jasne, że telewizja jest jednym z najpotężniejszych instrumentów kształtowania opinii. Dzisiaj suwerenny naród zazwyczaj »wyraża sądy« w zależności od tego, jaką opinię podpowie mu telewizja. Kierując zaś opiniami, telewizja doprawdy rozciąga swą władzę nad centrum, gdzie zachodzą wszystkie procesy współczesnej polityki.”<sup>52</sup> The concepts I am referring to fall under political psychology and social psychology, and are outside of my area of interest. What is important for scientists specialising in electoral systems are the legal regulations governing the publication of opinion polls and forecasts in the pre-election period, as well as determining this phenomenon by comparing poll-based forecasts with the actual election results.

#### 4.

The issues presented previously, which fall under the methodological scope of electoral systems research, have been selected at the discretion of

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<sup>52</sup> G. SARTORI: *Homo videns...*, p. 38.

the author and constitute his theoretical and axiological choice. The spectrum covered by these issues is broad though I am far from believing that it is all-inclusive. The process we are dealing with is dynamic, and will surely provide new research opportunities in the future. Nevertheless, the scope I have provided is relatively broad. Deformation researchers do not normally conduct such multi-faceted analyses that would correspond with all the issues presented herein. Partial analyses, based on specific research methods, are currently the dominant form of research. Selecting a method involves choosing the most reliable and objective research instrument. Nevertheless, it almost always involves choosing a certain range of model variables. As always, a model approach may also carry the risk of being subjective. Public life is too diverse for a researcher to use just one method in the long-run. Furthermore, a researcher must decide whether it is suitable for studying a given electoral system of a particular state. For this very reason, methods of studying electoral deformation (also referred to as indices) evolve, and their authors are numerous. These methods can be divided into two basic groups: electoral behaviour gauges and gauges measuring the impact of the electoral system on the party system. The second group includes mainly proportionality and disproportionality indices, indices of the effective number of parties, of fragmentation and fractionalisation of the party system, of party aggregation and government relevance. These gauges became popular in the 50s of the 20th century thanks to Maurice Duverger (Duverger's law). Some well known political scientists and authors of various methods include in particular Arendt Lijphart, Michael Gallagher, Matthew S. Shugart, Douglas W. Rae, Markku Laakso and Rein Taageper.

The relationship between electoral systems, party systems and the state-institutional elements of a political system are undisputed. However, it is difficult to speak of any automaticity or unidirectional influence. There have been examples where a change of the electoral system did not lead to significant changes in the party system (Italy 2005—2006), or those that involved a change of the party system without affecting the electoral system (Spain, Great Britain). On the other hand, Italy remains an interesting example. There, changes to the electoral and party systems that took place in 1993—1994 led to the coining of the term “second republic” by the Italian media and literature.<sup>53</sup>

Utilizing indices to study deformation phenomena is of course desired, however their selection should be correlated with the specific electoral system

<sup>53</sup> Unfortunately, this term is also indiscriminately repeated in some Polish papers. Unfortunately — because in the tradition that had been in force until then, the numbering was related to different political systems, whereas in Italy the system model (parliamentary-cabinet system) did not change.

and to the periods being studied in order to describe the typical trends and features of deformation.

## Bibliography

- ANTOSZEWSKI A.: *Współczesne teorie demokracji. Studia z teorii polityki*. Vol. 2. Wrocław 1998.
- BANASZAK B.: *Porównawcze prawo konstytucyjne współczesnych państw demokratycznych*. Kraków 2004.
- BANASZAK B.: *Prawo wyborcze obywateli*. Warszawa 1996.
- BIERNAT T.: *Legitymizacja władzy politycznej: Elementy teorii*. Toruń 2000.
- BUCZKOWSKI J.: *Podstawowe zasady prawa wyborczego III Rzeczypospolitej*. Lublin 1998.
- DOMAGAŁA M., IWANEK J.: "Regionalne i lokalne ustroje polityczno-prawne" In: „*Studia Politicae Universitatis Silesiensis*,” Vol. 11. Eds. J. IWANEK, M. STOLARCZYK, co-op. R. GLAJCAR. Katowice 2013, pp. 15—29.
- FILIPOWICZ S.: *Demokracja. O władzy iluzji w królestwie rozumu*. Warszawa 2007.
- GARLICKI L.: *Polskie prawo konstytucyjne. Zarys wykładu*. Warszawa 1999.
- GROPPI T.: "Forma rządu a systemy wyborcze we Włoszech." *Przegląd Sejmowy* 2007, Vol. 6.
- HELD D.: *Modele demokracji*. Przeł. W. NOWICKI. Kraków 2010.
- IWANEK J.: "Badanie systemów wyborczych — aspekty metodologiczne." In: *Wpływ deformacji wyborczych na systemy polityczne*. Ed. J. IWANEK. Toruń 2014.
- IWANEK J.: "Czwarta władza w systemie demokratycznym." In: *Władza media polityka*. Ed. M. GIERULA, co-op. M. WIEŁOPOLSKA-SZYMURA. Katowice 2006.
- IWANEK J.: „Partia regionalna, partia lokalna, regionalne i lokalne systemy partyjne — aspekty teoretyczne.” In: *Autonomia terytorialna w perspektywie europejskiej*. Vol. 3: *Regionalne i lokalne partie polityczne i systemy partyjne*. Eds. J. IWANEK, W. WOJTASIK. Toruń—Katowice 2014.
- IWANEK J.: "Standaryzacja demokracji współczesnej." In: *Studia nad współczesnymi systemami politycznymi: Księga dedykowana profesorowi Andrzejowi Antoszewskiemu*. T. 1: *Podmioty i procesy demokratyczne*. Wrocław 2014.
- JAMRÓZ A.: *Demokracja*. Białystok 1999.
- JASKIERNIA J.: *Zasada równości w prawie wyborczym USA*. Warszawa 1992.
- LUDWIKOWSKI R., LUDWIKOWSKA A.: *Wybory prezydenckie w USA na tle porównawczym*. Warszawa 2009.
- MICHAŁAK B., SOKAŁA A.: *Leksykon prawa wyborczego i systemów wyborczych*. Warszawa 2010.
- MIDERA D.: "Głosowanie przez Internet a demokracja". *Studia Politologiczne* 2011, nr 20.
- MISZTAŁ A.: *Degrressive Proportionality and the Shaping of the Composition of the European Parliament) was not Precisely Defined (i.e. via a Mathematical Equation)*. Wrocław 2012.
- NOHLEN D.: *Prawo wyborcze i system partyjny. O teorii systemów wyborczych*. Transl. R. ALBERSKI, J. SROKA, Z. WIKTOR. Warszawa 2004.
- NOHLEN D.: *Sistemas electorales del mundo*. Madrid 1981.
- Polskie prawo konstytucyjne*. Ed. W. SKRZYDŁO. Lublin 2004.

- SARTORI G.: *Homo videns. Telewizja i postmyślenie*. Transl. J. USZYŃSKI. Warszawa 2007.
- SARTORI G.: *Teoria demokracji*. Transl. P. AMSTERDAMSKI, D. GRINBERG. Warszawa 1994.
- WASZAK M., ZBIERANEK J.: *Propozycja obniżenia granicy wieku czynnego prawa wyborczego do 16 lat*. Warszawa 2010.
- WNUK-LIPIŃSKI E.: *Demokratyczna rekonstrukcja: Z socjologii radykalnej zmiany społecznej*. Warszawa 1996.
- WOJTASIK W.: *Funkcje wyborów w III Rzeczypospolitej: Teoria i praktyka*. Katowice 2012.
- ŻUKOWSKI A.: *Systemy wyborcze*. Olsztyn 1997.